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SERVICE DATE – JULY 27, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 635X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN GRATIOT COUNTY, MI

Decided: July 26, 2005

CSX Transportation, Inc. (CSXT) and Mid-Michigan Railroad, Inc. (MMR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuance of Service for CSXT to abandon and MMR to discontinue service over approximately 5.5 miles of railroad from milepost CBE-40.00 at Alma, to milepost CBE-45.5 at Elwell, in Gratiot County, MI. Notice of the exemption was served and published in the Federal Register (68 FR 38420) on June 27, 2003.¹

By decision and notice of interim trail use or abandonment (NITU) served July 29, 2003, the proceeding was reopened, and the Friends of Fred Meijer Heartland Trail (Heartland Trail) was authorized to negotiate an interim trail use/rail banking agreement with CSXT for the entire line pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).² The negotiating period under the NITU was extended by decisions served on January 22, 2004, August 9, 2004, and February 7, 2005. The latest NITU extension expired on July 22, 2005. The consummation notice filing deadline is scheduled to expire on September 19, 2005.

On July 22, 2005, CSXT filed a request for an additional 180-day extension of the NITU negotiating period until January 18, 2006. CSXT states that it has not consummated the abandonment, has not been able to finalize negotiations with Heartland Trail, and desires to continue to negotiate for interim trail use/rail banking with Heartland Trail. Additionally, CSXT requests an extension of the consummation notice filing deadline until March 19, 2006.

¹ The notice served June 27, 2003, embraced STB Docket No. AB-364 (Sub-No. 9X), Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—in Gratiot County, MI.

² The July 29 decision also imposed a public use condition that expired on January 25, 2004, and three environmental conditions consisting of: (1) a National Geodetic Survey (NGS) condition; (2) a State of Michigan Department of Environmental Quality (MIDEQ) condition; and (3) a historic preservation condition. By decision served October 28, 2003, the historic preservation condition that was imposed in the July 29 decision was removed. The other conditions remain in effect.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F. 3d 654, 659 (8th Cir 1996), cert. denied, 519 U.S. 1149 (1997). An extension of the consummation deadline also is justified. Accordingly, the NITU negotiating period will be extended to January 18, 2006, and the consummation notice filing deadline will be extended until March 19, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The requests by CSXT for an additional 180-day NITU negotiating period and an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to January 18, 2006.
3. The authority to abandon must be exercised on or before March 19, 2006.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary